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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/602,198	06/22/2000	Theodore G. Habing	068757.P063C	8408

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

18

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/602,198

Applicant(s)

HABING ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-67 is/are rejected.
- 7) ☒ Claim(s) 32, 34, 36, 46, 48, 50-52, 57, 60, 66 and 67 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 17, 2003 has been entered.

Claim Objections

2. Claims 32, 34, 36, 46, 48, 50-52, 57, 60, 66 and 67 are objected to because of the following informalities:

in claims 32, 46 and 60, line 4 of each claim, the period "." presumably should be replaced with a semi-colon --;--;

in claims 34 and 48, line 1 of each claim, before "arms" the term --secondary-- presumably should be inserted to distinguish the recitation "the arms" as referring to the secondary arms and not the press arm or main arm member;

in claim 36, line 1, "pivots" presumably should be replaced with --axes-- to correct a lack of antecedent basis for "the secondary pivots";

in claim 50, line 1, "46" presumably should be replaced with --49-- to provide antecedent basis for the recitation of "the transverse cross member";

in claim 51, line 1, "46" presumably should be replaced with --49-- to provide antecedent basis for the recitation "the upright portion";

in claim 52, line 1, "46" presumably should be replaced with --49-- to provide antecedent basis for the recitations "the lower end", "the upper portion" and "the transverse cross member";

in claim 57, line 1, "46" presumably should be replaced with --49-- to provide antecedent basis for the recitations "the transverse cross member" and "the upper portion";

in claim 66, line 2, "secondary pivot axes" presumably should be replaced with language similar to --rotatable coupling to the transverse cross member-- to correct a lack of antecedent basis for "secondary pivot axes"; and

in claim 67, line 2, "the upper portion" presumably should be replaced with --the elongate portion-- to correct a lack of antecedent basis for "the upper portion.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 32-43, 46-57 and 63-67 are rejected under 35 U.S.C. 102(b) as being anticipated by *Hecox et al.* (US Pat. 5,456,644, cited as part of Paper No. 5). *Hecox et al.* discloses an exercise apparatus (Fig. 9A-D) comprising a frame with an upper region and a main pivot axis located laterally in the upper region; the frame further including a fore direction and an aft direction, the main pivot axis being located generally transverse to the fore

and aft directions. A press arm has a main arm member 142, 145 and a pair of secondary arms 144; the main arm member pivotally connected to the frame about the main pivot axis; the secondary arms pivotally connected to the main arm member about secondary axes 145, the secondary axes being laterally spaced apart and oriented in generally an upright manner (Fig. 9D). A source of resistance 141 is coupled to the press arm. The apparatus includes at least one starting position (Fig. 9D) in which the secondary axes are located aft of the main pivot axis. During use (as shown in Fig. 9D), the secondary axes are at all times located below the main pivot axis.

The secondary arms are capable of pivoting inward and outward about their respective secondary axes while the combination is simultaneously pivoting about the main pivot axis. Though this particular mode of operation is not disclosed by *Hecox et al.*, the secondary arms and main arm member are capable of the claimed movement. The main arm member includes an upright portion 142 having an upper end and a lower end, the upper end being pivotally coupled to the main pivot axis. The main arm member further includes a transverse cross member 242 having a middle region connected to the lower end of the upright portion and first and second ends located laterally outward of either side of the middle region. The secondary axes are disposed at the opposite ends of the transverse cross member. The upright portion is located in a vertical plane, its lower end being below its upper end. As shown in Fig. 9D, the lower end of the upright portion is also aft of its upper end, whereby the connection between the transverse cross member and the upright portion is also aft of the main pivot axis. The connection of the transverse cross member to the upright portions is a non-rotatable connection. The secondary arms rotate about axes that are substantially parallel to each other, are inclined

from the vertical in a forward direction (Fig. 9d), and are orthogonal to the main pivot axis. The secondary arms have portions that extend at an oblique angle relative to their respective secondary pivot axes.

5. Claims 32-37, 41, 44-51, 54, 58-62 rejected under 35 U.S.C. 102(b) as being anticipated by *Deola* (US Pat. D359,326, cited as part of Paper No. 8). *Deola* discloses an exercise apparatus comprising a frame with an upper region and a main pivot axis located laterally in the upper region; the frame further including a fore direction and an aft direction, the main pivot axis being located generally transverse to the fore and aft directions. A press arm has a main arm member and a pair of secondary arms; the main arm member pivotally connected to the frame about the main pivot axis; the secondary arms pivotally connected to the main arm member about secondary axes (for the current claims, refer to the pivots labeled tertiary pivot in the previously annotated drawings of Figs. 2 and 7 in the references cited as part of paper no. 8), the secondary axes being laterally spaced apart and oriented in generally an upright manner. A source of resistance is coupled to the press arm. The apparatus includes at least one starting position in which the secondary axes are located aft of the main pivot axis. During use, the secondary axes are at all times located below the main pivot axis.

The secondary arms are capable of pivoting inward and outward about their respective secondary axes while the combination is simultaneously pivoting about the main pivot axis. The main arm member includes an upright portion having an upper end and a lower end, the upper end being pivotally coupled to the main pivot axis. The main arm member further includes a transverse cross member having a middle region connected to the lower end of the

upright portion and first and second ends located laterally outward of either side of the middle region. The secondary axes are disposed at the opposite ends of the transverse cross member. The upright portion is located in a vertical plane, its lower end being below its upper end. The secondary arms rotate about axes that are inclined from the vertical in a forward direction. The source of resistance comprises a weight coupled to the press arm via one or more cables. The cables are supported by at least one pulley rotatably mounted on the main arm member.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



Victor K. Hwang
October 19, 2003